FAVOUR MOORE & WILHELMSEN, P.A. Post Office Box 1391
Prescott, AZ 86302-1391
928/445-2444

David K. Wilhelmsen, #007112 Marguerite Kirk, #018054

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF ARIZONA COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C.) CUNDIFF, husband and wife; BECKY NASH,) a married woman dealing with her separate) property; KENNETH PAGE and KATHRYN) PAGE, as Trustee of the Kenneth Page and) Catherine Page Trust,) Plaintiffs,)

VS.

DONALD COX and **CATHERINE COX**, husband and wife, Defendants.

Case No.

JEANNE MICKS, OLERK
BY: Andre When

PLAINTIFFS' OBJECTION TO DEFENDANTS' SUPPLEMENTAL AUTHORITIES RE: PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT

Division 1

Plaintiffs, John and Barbara Cundiff, Becky Nash, and Kenneth and Kathryn Page, by and through undersigned counsel, hereby oppose Defendants' impermissible filing of a purported "supplemental authorities" concerning Plaintiffs' motions for summary judgment taken under advisement by this Court following oral argument on January 31, 2005.

The purpose of filing supplemental authorities with a court is to bring to the court's attention recently discovered pertinent authorities or judicial decisions released subsequent to completion of briefing on the matter that directly bear on the issues before the court. Supplemental authorities are *not* a vehicle to re-urge argument or case law that could have, or should have, been argued by the party in its moving papers or oral argument.

In this instance, Defendants' supplemental authorities is a thinly veiled attempt to re-argue matters already fully briefed and orally argued to the Court. Defendants are impermissibly attempting to raise a sur-rebuttal argument. This is not permitted under Arizona's rules of civil procedure.

DIV. 1 FEB |- 4 2005



8

3

4

5

6

7

10 11

12

13 14

> 15 16

1718

19

2021

22

2324

25

26

which they have fully had an opportunity to assert to this Court. Defendants have had ample 2 opportunity to raise argument and persuasive authority to the Court, and having failed to do so in a 3 manner proscribed by the rules of civil procedure, cannot attempt to do so now under the guise of 4 5 filing "supplemental authority" with the Court. RESPECTFULLY SUBMITTED this 3rd day of February, 2005. 6 FAVOUR, MOORE & WILHELMSEN, P.A. 7 8 9 10 Marguerite Kirk 11 Attorneys for Plaintiffs 12 Original of the foregoing filed 13 this 3rd day of February, 2005 with: 14 Clerk, Superior Court of Arizona 15 Yavapai County 120 S. Cortez St. Prescott, Arizona 86302 16 A copy hand-delivered this 3rd day of February, 2005 to: 17 Honorable David L. Mackey 18 **Division One** 19 Superior Court of Arizona Prescott, Arizona 20 and, a copy mailed this 3rd day of February, 2005 to: 21 Mark Drutz 22 Jeffrey Adams MUSĞROVE, DRUTZ & KACK, P.C. 23 1135 Iron Springs Road Prescott, Arizona 86302 24

1

25

26

Therefore, Plaintiffs request that this Court refuse to allow Defendants to again argue that